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Introduction to the Special Issue

Law, Culture and the Humanities

Violent Complicities beyond the Legal Imagination: Exploring the Epistemic and Political Power of Art

Mihaela Mihai and Maša Mrovlje

This special issue emerged from the engaging intellectual conversations its curators and contributors have had within the ambit of the European Research Council Starting Grant project, *Illuminating the “Grey Zone”: Addressing Complex Complicity in Human Rights Violations*. Located at the intersection between law, political theory, history, aesthetics and cultural studies, it is dedicated to a rigorous and complex engagement with the thorny issue of complicity with systemic violence. The papers included here start from a suspicion that legal concepts are insufficient when it comes to grappling with structurally embedded, relational and temporally dynamic patterns of violent complicity. Instead, they turn to various forms of art – and in particular to literature, cinema and music – to examine artistic works’ capacity to avoid law’s reductionism and provide alternative, illuminating accounts of complicity.

Legal philosophers have long been working on parsing out levels of human responsibility for wrongdoing. (Kutz 2000; Gardner 2007; May 2010; Ciorria 2011; Lepora and Goodin 2013) Their key goal is to provide a set of analytical tools for differentiating between different levels of *individual* complicity in wrongdoing, thereby supporting processes of legal punishment. Disagreement over the conditions for counting an individual legally complicit run deep and are mostly centred on the presence of intent, on whether a causal contribution obtains, and on the degree of autonomy necessary for complicity to be recognised legally. In their systematic account, Goodin and Lepora distinguish between connivance, contiguity, collusion, collaboration, condoning, consorting, conspiring, and full joint wrongdoing. (Lepora and Goodin 2013) These precise, distinct categories can illuminate the many faces of complicity for establishing legal accountability, according to the wrongdoer’s relative degree of blameworthiness. Moreover, they help identify those instances when individuals cannot be held legally liable.

Thus deployed, legal methodological individualism produces a complex account of complicity.¹ However, all the contributors to this special issue share a belief that this literature embraces a rather simplistic notion of subjectivity and agency. For all of them, complicity exceeds criminal law’s blunt categories. They therefore propose to understand complicity as always enmeshed in complex social relations and resilient yet dynamic constellations of power. While useful for ascertaining legal liability, legal philosophical

¹ For fresh critiques of methodological individualism in relation to complicity, see (Afxentiou, Dunford, and Neu 2017)

frames fail to capture diffuse, temporally enduring, institutionalised and affectively anchored patterns of complicity. To understand this complexity – in general and under circumstances of political repression – this special issue proposes that we need to leave behind the moralist individualism and definitional fiat of legal philosophers and explore how the temporal, positional and relational nature of human subjectivity determine where one ends up within the spectrum of involvement with violence. Two objectives guide us.

First, while law and its theorists focus on obvious, discrete, and intentional individual acts of implication in wrongdoing, our contributors suggest that complicity is mediated by power structures that normalise wrongdoing and render it invisible. Thus, Prundeanu focuses on the effect of patriarchy on gendered ascriptions of ‘complicity with the enemy’ and patterns of complicity with gender violence in conflict zones. Atack and Popa D., in turn, examine anti-Semitism not as an attitudinal or character flaw that characterises perpetrators, but as a generalised cultural background against which institutionalised political and social violence reproduces itself over time, including via the official politics of memory. In an effort to displace voluntarist moral individualism, Brown then looks at victims’ complicity with the Nazi killing machine through the prism of ‘choiceless choices’, while Greco relies on Deleuze and Guattari’s concepts of ‘desire for repression’ and ‘micro-fascism’ to illuminate the position of ‘ordinary people’ who often turn a blind eye to the widespread crimes of oppressive dictatorial regimes. Last but not least, Popa B. brings a fresh perspective by proposing to recuperate complicity’s positive political valence, as in the case of its emergence within a just struggle, such as that against capitalist exploitation.

Second, all contributors mine literature, music and cinema for more discriminating and illuminating accounts of complicity, accounts that trouble simplistic legalist notions of guilt and innocence. They build on insights from political theory, aesthetics, film and literary studies to tease out artworks’ contingent, yet not negligible, epistemic and political powers. They examine how various formal aesthetic strategies – e.g. the deployment of sarcasm and derision (Atack), the use of cinematic re-enactment (Popa D), classic documentary techniques and the biopic genre (Brown) or the inclusion of victim testimonies (Prundeanu) – can help capture and render politically legible various aspects of complicity that law is blind to. The authors highlight the role of films, poems, novels and songs in problematising collective and individual silences about systemic rights violations (Greco); tracking societal involvement in racist orders (Atack, Popa D.) and gendered violence (Prundeanu); revealing the ethical complexity of making sense of and representing ‘privileged victims’ (Brown); and recuperating the sometimes-positive complicit alignment between ideology and sexuality (Popa B.). All authors introduce exemplary works – some by world renowned classics, others produced in globally marginalised cultural environments – that render messier and therefore, we suggest, more accurate our understanding of complicity. Case studies from Rwanda, Uganda, France, Romania, Argentina and Germany vindicate this special issue’s trust in artworks’ capacity to expose and challenge violent practices and patterns of complicity – in their ideatic, material and affective complexity.

To give a brief outline, Diana Popa kick-starts the special issue by exploring the political value of Radu Jude’s film *‘I Do Not Care if We Go Down in History as Barbarians’* (2018) for challenging the official story of the Romanian participation in WWII. She shows how

the film's use of re-enactment, archival imagery and philosophical debates works to reveal the institutionalised climate of anti-Semitic and anti-Roma nationalism against which Romania's participation in the Shoah took place, and simultaneously encourages a pluriperspectival confrontation with the painful past. Margaret Attack, too, is interested in problematising the deeply entrenched patterns of complicity in systemic violence, with a focus on the Nazi Occupation of France. Her paper examines the technique of derision employed across three different artworks about the war – Serge Gainsbourg's album *Rock Around the Bunker*, Romain Gary's novel *La Danse de Gengis Cohn* and Albert Cohen's autobiography *Ô vous frères humains* – illustrating how it can expose the appalling realities of anti-Semitic violence, its persistence in the present as well as the limits of individualistic ideas of guilt.

Mauro Greco continues the examination of the complex dynamics of societal complicity in systemic violence focusing on the case of the most recent military dictatorship in Argentina (1976–1983). He analyses two recent Argentine films, *The Long Night of Francisco Sanctis* and *Red*, which aptly manifest the micro-fascist attitudes and desires for repression among ordinary people: those small fears, anxieties and jealousies that constituted the violent regime's very conditions of possibility. Similarly, Adam Brown's paper employs the lens of film to confront the grey zones of political violence, focusing on the ambiguities of victim's complicity in their own oppression – the case of 'privileged' Jews. His paper draws on two Holocaust films, Tor-Ben Mayor's *Kapo* and Margarethe von Trotta's *Hannah Arendt*, to tease out the different ways of representing the ethical dilemmas emerging in situations of extreme violence, attentive to how they subvert the conventional meanings of agency and choice.

Finally, both Andreea Prundeanu and Bogdan Popa delve into how our ascriptions and understandings of complicity are conditioned by hierarchies of gender inequality. Prundeanu examines documentary and artistic testimonies of 'traumatic motherhood' in three war-torn contexts: 'sentimental collaboration' in WWII-France, genocidal rape in Rwanda, and abduction in conjunction with 'forced marriage' by the Lord's Resistance Army in Uganda. She observes the detrimental effects of motherhood as a patriarchal institution on mothers as well as their children, unearthing how it acted as a catalyst for pervasive practices of shaming and othering and perpetuated relations of gender violence. Trying to recuperate a certain positive valence of Complicity, Bogdan Popa ends the special issue with an inquiry into sexual complicity as a potential site of sexual and political counter-normativity. Specifically, his paper draws on the Romanian socialist realist film, *The Valley Resounds*, to unveil the emancipatory potentials of complicity in communist sex, oriented to enacting a utopian future beyond the capitalist legal, economic and heteronormative order.

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